



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EC-2002-030
II-A-064

CERTIFIED MAIL #334 884 803
RETURN RECEIPT REQUESTED

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Herbert Brake, President
Empire Harbor Marine
P.O. Box 2284
Wilton, NY 12831

Re: Notice of Violation(s): File No. AED/MSEB - 4814

Dear Mr. Brake:

On November 25, 1997, authorized representatives of the U.S. Environmental Protection Agency ("EPA") inspected Empire Harbor Marine, located in Wilton, New York 12831. The inspection was conducted to determine compliance with section 211 of the Clean Air Act ("Act"), 42 U.S.C. § 7545, and the regulations issued thereunder (40 C.F.R. Part 80). Where inappropriate fuels are used in internal combustion engines, the emissions of harmful gases can increase significantly. Notwithstanding improvements in vehicle emission controls, emissions from motor vehicles continue to make up a very large portion of all air pollution. Congress has established a program of improvement and regulation of fuels to protect our air quality from unnecessary pollution associated with the misfueling of vehicles.

Section 211(i) of the Act, 42 U.S.C. § 7545(i), and 40 C.F.R. § 80.29 prohibit any person, including a wholesale purchaser-consumer, from selling, supplying, offering for sale or supply, dispensing, transporting or introducing into commerce diesel fuel for use in motor vehicles unless the diesel fuel has a cetane index of at least 40, or a maximum aromatic content of 35 volume percent, and a sulfur content, by weight percent, of no greater than 0.05%. Section 211(g) of the Act, 42 U.S.C. § 7545(g) prohibits any person from introducing or causing or allowing the introduction of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40 or such equivalent alternative aromatic level as prescribed by the Administrator. Section 211(d) of the Act, 42 U.S.C. § 7545(d), subjects violators of these provisions to a maximum civil penalty of \$25,000 per day for each violation and the amount of the economic benefit or savings resulting from the violation.



Recycled/Recyclable
Printed with Soy/Candle Ink on paper that
contains at least 50% recycled fiber

As a result of the inspection, EPA has determined that Empire Harbor Marine was selling, offering for sale or dispensing for use in motor vehicles diesel fuel with a sulfur content greater than 0.05% by weight or was introducing or causing or allowing the introduction of diesel fuel into a motor vehicle(s) which it knew or should have known contained a sulfur concentration in excess of 0.05% by weight. Each act constitutes a violation of 40 C.F.R. § 80.29(a). Empire Harbor Marine, as the diesel fuel wholesale purchaser-consumer which sold, dispensed or offered for sale the diesel fuel that was in violation, is therefore liable for the violation(s) pursuant to 40 C.F.R. § 80.30(f). Each act also constitutes a violation of section 211(g) of the Act for which Empire Harbor Marine, as a person, is liable for introducing or causing or allowing the introduction of diesel fuel that exceeds the standard into a motor vehicle.

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of the EPA to assess a civil penalty of up to \$25,000 for every day of such violation(s) and the economic benefit or savings resulting from the violation(s). In determining the appropriate penalty for the noticed violation(s), we consider the gravity of the violation(s), the economic benefit or savings (if any) resulting from the violation(s), the size of your business, your history of compliance with the Clean Air Act, actions taken by you to remedy the violation(s) and to prevent recurrence of further violations, the effect of the penalty on your ability to continue in business and such other matters as justice may require.

We encourage early settlement of such matters. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation(s) are corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court. Rather than initiating litigation, we propose a civil penalty for the violation(s) alleged in this Notice of Violation(s) of One Thousand Dollars (\$1,000).

The EPA official designated below has been assigned to this case. Please contact her regarding this Notice of Violation(s).

Judith E. Graham, Attorney
U.S. Environmental Protection Agency
Western Field Office
Mobile Source Enforcement Branch
Air Enforcement Division
12345 W. Alameda Parkway
Suite 214
Denver, CO 80228
(303) 969-6476

Please let me once again emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,

Bruce C. Buckheit

Bruce C. Buckheit
Director, Air Enforcement Division

Attachment

ATTACHMENT

Vehicle

License Plate

1977 GMC

(NY) RS4956